

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4202 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

YOGESHKUMAR GIRJASHANKAR JOSHI

Versus

STATE OF GUJARAT

Appearance:

MR NAVIN PAHWA with Ms. SUMAN PAHWA for Petitioner

MR SS PATEL AGP for Respondent No. 1

MR DN PATEL Standing Counsel for Respondent No. 4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 20/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner challenges the order of preventive

detention dated 26th April, 1999, made by the District Magistrate, Junagadh under the powers conferred upon him under Sub-section 2 of Section 3 of the Prevention of Blackmarketing & Maintenance of Supplies of Essential Commodities Act, 1980 [hereinafter referred to as, 'the Act'].

3. The petitioner is dealing in edible oil and his activities are alleged to be prejudicial to the maintenance of supplies of edible oil seeds [groundnuts].

4. The impugned order is challenged on the grounds that the representations made to the District Magistrate and the Central Government have not been dealt with expeditiously and the delay being undue and unreasonable, is fatal to the order. It is submitted that the representation made to the detaining authority on 9th June, 1999 was received by him on 18th June, 1999 and was forwarded to the State Government on 23rd June, 1999. The District Magistrate has thus consumed unreasonably long period in forwarding the representation to the State Government which should be considered fatal to the impugned order. The dates referred to in the petition are disputed by the learned AGP Mr. Patel. He has submitted that the representation made to the detaining authority was received by him on 21st June, 1999. However, by that time, he having been transferred out of Junagadh, he immediately forwarded the same to the District Magistrate, Junagadh which was received by the District Magistrate on 22nd June, 1999 and was forwarded to the State Government on 23rd June, 1999. In view of the dispute in respect of the dates on which the representation was received by the detaining authority and the District Magistrate, Junagadh, I do not deal with this contention.

5. It is next contended that the representation made to the Central Government on 9th June, 1999 was received by it on 11th June, 1999. Before that, the Central Government had received the entire record of the matter and the comments of the State Government on 17th June, 1999. The Central Government, therefore, ought to have immediately considered the representation on the materials available, however, instead it called for the comments of the State Government on the same date which were received by it on 23rd June, 1999 and the representation was rejected on 29th June, 1999. It is submitted that the Central Government, by calling comments from the State Government, whiled away the time between 11th June, 1999 and 23rd June, 1999, which was unwarranted. Besides, the time spent from 23rd June,

1999 to 29th June, 1999 has also not been explained. It is also contended that the counter affidavit made on behalf of the Central Government does not disclose the active application of mind by the authorised officer in respect of calling for the comments from the State Government. Mr. Pahwa has, therefore, relied upon the judgment of the Supreme Court in the matter of R. Paulsami v. Union of India & Ors. [1994 (4) SCC 415].

6. The facts stated by Mr. Pahwa are not disputed. Mr. Patel, the learned counsel appearing for the Central Government has, however, argued that considering two intervening holidays, the period spent in considering the representation cannot be said to be undue and unreasonable and should not be fatal to the impugned order.

7. In the matter of R. Paulsami [Supra], the Court observed that the order for calling for comments of the sponsoring authority was not passed by any of the officers empowered by the orders of the Minister dated 7th July, 1995. The Court, therefore, held that the representation was dealt with in a routine manner and there was no application of mind by the competent officer as to whether it was necessary to call for the comments of the sponsoring authority. In other words, the delay being uncalled for, was regarded as unreasonable and fatal.

8. In the present case, the affidavit made on behalf of the Central Government does not disclose whether the authorised officer after considering the materials available had taken a conscious decision to call for further comments from the State Government. In absence of such conscious decision, the time spent from 11th June, 1999 to 23rd June, 1999 is required to be regarded as uncalled for, and fatal to the impugned order. Further, the affidavit does not disclose that during the four working days between 23rd June, 1999 and 29th June, 1999 the representation was being actively considered by the concerned officer. In absence of such materials being put forth in the affidavit, the time spent must be regarded as unreasonable and unexplained. In view of the above referred judgment in the matter of R. Paulsami and in view of the prevailing judicial pronouncements, such delay shall be fatal to the impugned order. The continued detention of the petitioner is, therefore, null and void.

9. For the aforesaid reasons, the petition is allowed. The Order dated 26th April, 1999; Annexure-A to

the petition, is quashed and set-aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

Prakash*